

Case Summary

Aaron Israel, also known as Aaron Isby (herein referred to as “Israel”), appeals the trial court’s decision denying him relief in his small claims action against the Indiana Department of Correction (“IDOC”). Israel contends that the trial court erred when it determined: (1) that the IDOC acted within the scope of its disciplinary authority when it ordered Israel to pay restitution; (2) that the agreement between the parties was unenforceable because it was not signed by the proper authority and thus was not a valid contract; and (3) that Israel was not entitled to appointed counsel. We find, preliminarily, that this dispute arising out of an agreement between the parties following a prison disciplinary action is properly before this Court to the extent that it challenges the IDOC’s authority to order restitution as a disciplinary action and to the extent that it involves the parties’ agreement but not the disciplinary action itself. We hold, then, that the IDOC has the authority, pursuant to Indiana Code § 11-11-5-3, to order a prisoner in a disciplinary proceeding to pay restitution. We further hold that the agreement between Israel and the IDOC was never a valid contract, though we disagree with the trial court’s reasoning and base our holding on the lack of consideration supporting the agreement. Finally, we hold that Israel failed to demonstrate any “exceptional circumstances” that would entitle him to appointed counsel pursuant to Indiana Code § 34-10-1-2(b)(2). We therefore affirm the trial court in all respects.

Facts and Procedural History

Israel is a prisoner at the Westville Correctional Facility in Westville, Indiana. In October 1990, while being held on a criminal conviction at the Indiana State

Reformatory, Israel attacked a prison guard. Later that month, Israel was found guilty of attempted homicide in a prison disciplinary proceeding,¹ and he was ordered to pay restitution to the IDOC in the amount of \$8363.85 for hospital, doctor, and ambulance costs stemming from the incident.

Pursuant to the IDOC Administrative Procedures Manual of Policies and Procedures, when a prisoner is ordered to pay restitution, that prisoner's trust fund may be frozen by prison officials if it does not contain sufficient funds to meet the restitution amount, and it may remain frozen until sufficient funds exist. *See* Appellee's App. p. 46-47. While it is unclear from the record when Israel's prison trust fund was first frozen or whether any restitution was paid from his fund before April 1996, Israel claims to have negotiated an "Offender State Restitution Payback Contract"² ("the Agreement") with then-prison superintendent Herbert Newkirk and prison employee Charles Whelan in February 1996. The Agreement provides that Israel agrees to make payments toward his restitution amount "in equal monthly installments of (50% of State Pay), commencing (1st State Pay) day of (April) 199(6)." *Id.* at 8 (terms in parentheses were supplied by parties). The Agreement provides, "this contract will not be effective until after the first installment has been paid, and may be rescinded upon default of any subsequent installments." *Id.* A separate paragraph of the Agreement provides:

¹ Pursuant to criminal charges arising from this incident, Israel was subsequently found guilty of attempted murder on July 21, 1992.

² Israel contends that the IDOC regularly enters into these agreements with inmates, *see* Appellant's Reply Br. p. 9-10, and indeed the agreement included in the record appears to be a state form with blank spaces available for the parties to the agreement to fill in various terms as needed. The State does not challenge Israel's portrayal of the form.

In return for faithful compliance of the above payment arrangement, the Indiana Department of Correction agrees to remove the existing lien on said offender's trust fund account, so that same will be unfrozen, and will remain unfrozen unless the named offender breaches the terms of this agreement as above, or otherwise engages in conduct which requires a subsequent independent lien to be placed on his account.

Id. The Agreement is dated February 27, 1996, and is signed by Israel and by Whelan, who signed on a line marked "Counselor (Witness) Maximum Control Complex." The following are listed as copy recipients of the Agreement: "Administrative Assistant II," "Case Manager," "Offender," "Offender Payroll," "Offender Packet," and "File." *Id.*

In April 1996, then, the IDOC began taking fifty percent of Israel's state pay after it was deposited into his prison trust account. Both parties continued to follow the terms of the Agreement through October 1996. However, in November 1996, Israel received a settlement payment in the amount of \$2800.00 from the Auditor of the State of Indiana, which settlement resulted from a class action lawsuit in which Israel was a class participant. The IDOC seized the entire amount of the settlement check from Israel's account and applied it toward his restitution debt. In addition, from that time until, apparently, the present, the IDOC has seized one hundred percent of Israel's state pay for restitution payment instead of the Agreement's specified fifty percent.

On October 26, 2004, Israel filed a Notice of Claim in the Small Claim Division of LaPorte Superior Court. The complaint named IDOC Commissioner Evelyn Ridley-Turner and IDOC Superintendent Craig Hanks, officials within the IDOC, as defendants, and alleged, essentially, that the IDOC was without authority to order him to pay restitution or to freeze his trust account and that the IDOC violated the Agreement when it took his \$2800.00 settlement and his state pay in excess of fifty percent for restitution.

The State filed a motion to dismiss on behalf of the named defendants. A trial was held, and the trial court issued its Findings and Judgment on July 29, 2005. The trial court dismissed Ridley-Turner and Craig as party defendants and substituted the IDOC as the defendant, and it denied the IDOC's motion to dismiss. The trial court found that the restitution against Israel was imposed pursuant to a valid disciplinary action, and it found that Whelan was not "an authorized individual of either the State or the Indiana Department of Correction" for the purposes of entering a contractual agreement. Appellant's Br. App. B (Findings and Judgment). The trial court's disposition of Israel's substantive claims is summarized in Finding/Conclusion Number Six:

Any funds of the plaintiff in his inmate trust account are not exempt from seizure for the automatic payment of restitution owed to the State of Indiana, especially where such restitution has been ordered as the result of a disciplinary hearing as was done in this case. The alleged restitution payback contract was not executed by an individual authorized to do so by either the State of Indiana or by the Indiana Department of Correction and accordingly the same is void.

Id. Israel now appeals this judgment.

Discussion and Decision

Israel raises a number of issues on appeal, which we consolidate and restate as the following three: (1) whether the IDOC had the authority to order Israel to pay restitution; (2) whether the trial court erred when it determined that the Agreement was not a valid contract and was, therefore, not binding on the IDOC; and (3) whether the trial court

erred when it determined that Israel was not entitled to have appointed counsel for the purposes of his civil action against the IDOC.³ We address each argument in turn below.

I. Subject Matter Jurisdiction

First, however, we are compelled to address the IDOC's primary argument, which contends that the trial court and, hence, this Court are without subject matter jurisdiction to hear Israel's claims. The IDOC correctly points out our Supreme Court's recent remark that "[f]or a quarter-century, our Court has held that IDOC inmates have no common law, statutory, or federal constitutional right to review in state court IDOC disciplinary decisions." Appellee's Br. p. 7 (citing *Blanck v. Indiana Dep't of Correction*, 829 N.E.2d 505, 507 (Ind. 2005)). However, the issue before us today does not require our review of the disciplinary decision against Israel; that is, Israel does not ask us to review the disciplinary decision *per se*, but rather he asks us to determine whether the IDOC had the statutory authority to make the decision it did—to order restitution—and if it did, whether the IDOC breached a contractual agreement secondary to *but separate from* that disciplinary decision. To the extent that Israel's claim adheres to these reviewable inquiries and does not exceed the subject matter jurisdiction of this Court, we address his case.

II. IDOC Authority to Order Restitution

Israel claims repeatedly throughout his briefs that the IDOC lacks the authority to order a prisoner to pay restitution in a proceeding stemming from a criminal act of the prisoner where the IDOC is neither a victim of the prisoner's act, nor the victim's estate

³ On May 22, 2006, Israel filed a Motion for Leave to File Record of Clerk for Use on This Appeal, which this Court ordered held in abeyance to be ruled upon by the writing panel, once assigned. We hereby grant said Motion.

or family. *See* Ind. Code § 35-50-5-3(a) (“the court may . . . order the person to make restitution to the victim of the crime, the victim’s estate, or the family of a victim who is deceased.”). Israel ignores the clear prescription, however, of Indiana Code § 11-11-5-3, which provides that the IDOC may take any of a number of actions, including the ordering of restitution, against a prisoner in a disciplinary proceeding. Therefore, Israel’s argument that the IDOC was without authority to order restitution, and alternatively his argument that because the IDOC lacked such authority the trial court could have converted his action against the IDOC to one of replevin, both fail.

III. Validity of Agreement as a Contract

Israel next contends that the trial court erred when it determined that the Agreement was not a valid contract between Israel and the IDOC because it was not signed by a person authorized to enter into a contractual agreement on behalf of the IDOC. Whether a set of facts establishes a contract is a question of law, which we review *de novo*. *See Fox Dev., Inc. v. England*, 837 N.E.2d 161, 165 (Ind. Ct. App. 2005). Israel contends that Whelan acted as an agent of the IDOC and that the then-superintendent of the Westville Correctional Facility, who the IDOC agrees can enter contractual agreements with prisoners, was present and authorized Whelan to sign the Agreement. Although on a cursory review we find Israel’s argument on this point to be persuasive, we agree with the trial court that the Agreement did not constitute a contract between Israel and the IDOC. We reach this conclusion, however, on other grounds.

A valid contract requires offer, acceptance, consideration, and manifestation of mutual assent. *Family Video Movie Club, Inc. v. Home Folks, Inc.*, 827 N.E.2d 582, 585

(Ind. Ct. App. 2005). We find the present Agreement to be lacking in one of these four cornerstones of contract formation: consideration. Consideration is a “bargained for exchange” whereby the promisor accrues a benefit or the promisee accepts a detriment. *DiMizio v. Romo*, 756 N.E.2d 1018, 1022-23 (Ind. Ct. App. 2001), *trans. denied*. “A benefit is a legal right given to the promisor to which the promisor would not otherwise be entitled.” *Id.* at 1023. “A detriment, on the other hand, is a legal right the promisee has forborne.” *Id.*

The IDOC Administrative Procedures Manual of Policies and Procedures expressly provides that a prisoner’s trust fund account may be frozen indefinitely when the prisoner is ordered to pay restitution and the funds available are insufficient to make that restitution. The IDOC, then, had the authority to freeze Israel’s account and to prevent him from accessing any of the funds contained therein until his restitution was paid in full. The Agreement between the IDOC and Israel, then, failed to stipulate any consideration flowing from Israel to the IDOC.

Here, the IDOC simply agreed to allow Israel to access a portion of the funds available in his prison trust account. The IDOC was not required to do this; it was merely a gratuitous act on its part—a favor extended to Israel—and Israel points to no benefit received by the IDOC as a result of the Agreement. *Spickelmier Indus., Inc. v. Passander*, 172 Ind. App. 49, 359 N.E.2d 563, 566 (1977) (a promise made without consideration is a gratuitous promise not enforceable by law absent some showing of reliance or detriment on the part of promisee); *Jones v. Lathrop-Moyer Co.*, 99 Ind. App. 127, 190 N.E. 883, 885 (1934) (“The refusal or discontinuance of a favor gives no cause

of action. If one trusts to a mere gratuitous promise of favor from another and is disappointed, the law will not protect him”). Moreover, because Israel was without rights to access *any* of his funds under the IDOC policy for restitution payments, Israel is unable to point to any detriment he has suffered, which would otherwise justify an equitable remedy in this case. The IDOC had the right to withhold all funds from its prisoner, it gratuitously relinquished part of that right for a period, and then it chose to reassert that right. Absent any consideration in its agreement with its prisoner, the IDOC was perfectly within its rights to operate in such a fashion. We therefore affirm the trial court’s determination that the Agreement between Israel and the IDOC was not a valid contract and, consequently, that Israel was not entitled to enforce the Agreement as against the IDOC.

IV. Appointment of Legal Counsel

Israel last argues that the trial court erred when it denied his motion for appointment of legal counsel. Appointment of legal counsel for indigent persons is covered by Indiana Code § 34-10-1-2, which provides in subsection (b) that:

If the court is satisfied that a person who makes an application [for leave to prosecute or defend as an indigent person] does not have sufficient means to prosecute or defend the action, the court:

- (1) shall admit the applicant to prosecute or defend as an indigent person; and
- (2) *may, under exceptional circumstances*, assign an attorney to defend or prosecute the cause.^[4]

⁴ Israel cites the Indiana Supreme Court’s decision in *Sholes v. Sholes*, 760 N.E.2d 156 (Ind. 2001), for his contention that Indiana Code § 34-10-1-2 mandates the appointment of legal counsel for indigent persons. Without going into the limitations of that statutory mandate as it then existed, we note that the legislature, partly in response to *Sholes*, amended this statute in 2002 to provide the trial court with the discretion to appoint counsel “under exceptional circumstances.” Ind. Code § 34-10-1-2(b)(2). Israel’s reliance on *Sholes*, then, is no longer timely.

(Emphasis added). Although neither party includes a copy of Israel's motion or the trial court's ruling on this issue for our review, Israel points to no exceptional circumstances that would compel a trial court to appoint counsel in this case. Furthermore, as the IDOC points out, Israel has significant experience prosecuting *pro se* claims against State defendants, having filed well over a dozen lawsuits in our region's federal courts over the past several years. We do not doubt, then, Israel's ability to prosecute this small claims action. *See Zimmerman v. Hanks*, 766 N.E.2d 752, 756 (Ind. Ct. App. 2002) ("[I]f the action is of the type that is often handled without the presence or assistance of counsel by persons who are not indigent, such as many small claims actions, the trial court may find that even an indigent applicant has 'sufficient means' to proceed without appointed counsel."). The trial court did not err when it denied Israel's motion for appointment of counsel.

Affirmed.

DARDEN, J., and RILEY, J., concur.